

THE LAW OFFICES OF
SCOTT L. FENSTERMAKER, P.C.
100 PARK AVENUE, 16TH FLOOR
NEW YORK, NEW YORK 10017
TELEPHONE (212) 302-0201
CELL (917) 817-9001
FACSIMILE (212) 302-0327
EMAIL scott@fenstermakerlaw.com
TWITTER @fensterlaw
www.fenstermakerlaw.com

OF COUNSEL
LINDA F. FENSTERMAKER, ESQ.

WESTCHESTER OFFICE
BY APPOINTMENT ONLY
50 MAIN STREET
WHITE PLAINS, NEW YORK 10606
TELEPHONE (914) 725-0955

July 7, 2010

VIA ECF AND FIRST CLASS MAIL

The Honorable Raymond J. Dearie
United States District Chief Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Roy Ageloff*; 98-1129S (RJD)

Dear Chief Judge Dearie:

I represent Roy Ageloff, 98-1129S (RJD), and write to request that the Court withdraw the Court's October 9, 2009 Writ of *Habeas Corpus ad Prosequendum* (the "Writ") and permit Mr. Ageloff to be redesignated by the Bureau of Prisons to a Federal Correctional Institution in or near Miami, Florida.¹ In order to facilitate Mr. Ageloff's request, he waives the right to be physically present for future sentencing proceedings.

Background

Mr. Ageloff was convicted of one count of racketeering and sentenced to a 96 month prison sentence in August of 2001. Mr. Ageloff has since served his prison sentence in this matter, although he remains incarcerated on separate charges. Mr. Ageloff was brought to New York in November of 2009 pursuant to the Writ and has been held at the Metropolitan Detention Center in Brooklyn since November of 2009. The purpose of the Writ was to secure Mr. Ageloff's attendance at his resentencing pursuant to the Second Circuit's April 2003 mandate.

Mr. Ageloff has filed a series of applications, the majority of which remain undecided. These requests include discovery requests of the government, requests of the Court for funds to help establish his defense, at least two motions to dismiss, and a request that the undersigned be granted permission to file an interim CJA voucher. Mr. Ageloff also filed a petition for a writ of *mandamus* in the United States Court of Appeals for the Second Circuit. That petition was denied.

¹ A copy of the Writ is attached hereto.

Honorable Raymond J. Dearie

July 7, 2010

Page 2 of 2

The Court initially scheduled an evidentiary hearing for May 17, 2010 for the purpose of resentencing Mr. Ageloff. On or about May 11, 2010, the Court held a status conference, at which it announced that it was reconsidering Mr. Ageloff's eligibility for appointed counsel. It then scheduled an evidentiary hearing for June 1, 2010. The evidentiary hearing was held, the defendant testified, and the government presented no evidence. The Court has not ruled on its *sua sponte* motion to reconsider Mr. Ageloff's eligibility for assigned counsel.²

Defendant's Request

Defendant requests that the Court withdraw the Writ. Mr. Ageloff is currently serving an independent federal prison sentence and has a projected release date of December 11, 2013. Mr. Ageloff, a resident of Florida, was previously incarcerated at FCI Miami, near his 84-year-old father and his two daughters, who both miss him dearly. Furthermore, I am informed that the medical staff at the MDC in Brooklyn has recently found a tumor in Mr. Ageloff's body and Mr. Ageloff feels that any treatment he may need would be better secured at FCI Miami.

It is no secret that incarceration in a detention center is more onerous than detention at a correctional institution. As it appears that the Court will not soon resolve Mr. Ageloff's matter, he asks that the Court withdraw the Writ and permit the Bureau of Prisons to redesignate him to a facility closer to home, his family, and where he can receive the proper treatment for his tumor. Mr. Ageloff is willing to waive any and all rights he has to be physically present for his restitution resentencing hearing in light of his request to return home.

If the Court has any questions, please have a member of the Court's staff contact me at any time.

Respectfully submitted,

The Law Offices of Scott L. Fenstermaker, Esq.

By:



Scott L. Fenstermaker, Esq.

cc: AUSA Dan Spector (via ECF)
Mr. Roy Ageloff (via first class mail)

² On May 18, 2010, Mr. Ageloff sought permission to file a motion seeking release of his funds currently being held by the clerk of the court. The Court did not rule on Mr. Ageloff's request to file a motion, instead directly denying Mr. Ageloff the ability to secure release of his funds by Order dated May 19, 2010 without hearing argument or receiving briefing. Defendant filed a May 27, 2010 motion seeking reconsideration of the Court's May 19th Order denying the release of his funds. The Defendant's motion to reconsider has not been addressed.

Eastern District of New York

APPLICATION FOR WRIT OF HABEAS CORPUS
UNITED STATES DISTRICT COURT

FILED
 IN CLERK'S OFFICE
 U.S. DISTRICT COURT E.D.N.Y.
 ★ OCT 9 2009 ★

BROOKLYN OFFICE

UNITED STATES OF AMERICA

- against -

ROY AGELOFF

Defendant.

☒ file no. CR-98-1129
☐ Criminal Miscellaneous

The undersigned ☒ Assistant U.S. Attorney ☐ Special Attorney hereby applies to the captioned court for the issuance of a writ of habeas corpus ☐ ad prosequendum ☐ ad testificandum ☐ in re a motion pursuant to 28 U.S.C. § 2255 and avers:

1. Name of detainee (and detainee number, if known): **ROY AGELOFF**
USMS# 57431-053 ORANGE COUNTY JAIL #09021855

2. Detained by ☐ Warden, New York Metropolitan Correctional Center, New York, New York
☐ Warden,
☒ Other: **ORANGE COUNTY JAIL - 3023 39TH STREET - ORLANDO, FLORIDA 32839-8694**
(Specify title of custodian and name and location of detention facility)

3. Detainee is ☐ charged in this district by ☐ Indictment ☐ Information ☐ complaint with,
 OR ☐ was convicted in this district of, violating Title 18, U.S.C. § _____, OR ☐ is a witness not
 otherwise available by the ordinary process of the Court.

4. Appearance is necessary on **NOVEMBER 12, 2009 @ 3 PM**, at _____ o'clock P M ☒ in
 Courtroom Number **10A**, OR ☐ before the Federal Grand Jury sitting in Room Number _____, of the United States
 Courthouse for this district, for ☐ arraignment ☐ plea ☐ trial ☐ sentencing
☐ in re a motion pursuant to 28 U.S.C. § 2255 ☐ the purpose of giving necessary testimony in the captioned proceeding
☒ other purpose(s), specifically **BEFORE THE HONORABLE RAYMOND J. DEARIE**

VIOLATION OF SUPERVISED RELEASE HEARING

Sworn to before me this

9th day of November
[Signature]

2009 **LINDA J. McNEILL**
 Notary Public, State of New York
 No. 01MC6017505
 Qualified in Kings County
 Commission Expires 12/14/20 **10**

☒ Assistant United States Attorney
 Eastern District of New York

☐ Special Assistant United States Attorney **6297**
JONATHAN GREEN

☒ Ad Prosequendum

☐ Ad Testificandum

☐ In Re Motion to Vacate

The instant application is granted and the above-named custodian, as well as the United States Marshal for this district, his deputies, and all other United States Marshals and their deputies, is and are each directed to produce the named detainee, in civilian clothes, on the date, at the time, and in the place recited above; and thereafter to maintain the said detainee within the jurisdiction of this Court pending the satisfaction of this writ or the further orders of the Court.

Dated: _____ New York

20

ROBERT C. HEINEMANN
 CLERK, E.D.N.Y.

[Signature]
 Deputy Clerk

U.S.M.J.

A TRUE COPY	
ATTEST	
DATE	10/9/2009
ROBERT C. HEINEMANN	
BY	<i>[Signature]</i>
CLERK	
DEPUTY CLERK	